

Steven R. Blackburn, State Bar No. 154797
Leslie J. Mann, State Bar No. 95467
Rachel S. Hulst, State Bar No. 197330
EPSTEIN BECKER & GREEN, P.C.
One California Street, 26th Floor
San Francisco, California 94111-5427
Telephone: 415.398.3500
Facsimile: 415.398.0955
SBlackburn@ebglaw.com
Lmann@ebglaw.com
RHulst@ebglaw.com

Attorneys for Defendant
Lucent Technologies Inc.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
California,

Plaintiff, and

STEVEN J. CARAUDDO
Plaintiff-Intervenor

v.

LUCENT TECHNOLOGIES INC., and;
DOES 1 through 20,

Defendants.

CASE NO.: 3:07-cv-03747-PJH

**DEFENDANT LUCENT
TECHNOLOGIES' ANSWER TO
COMPLAINT IN INTERVENTION**

Defendant LUCENT TECHNOLOGIES INC., a Delaware corporation (hereinafter
"Lucent") for itself and no other defendant, answers Plaintiff-Intervenor Steven Carauddo's
("Carauddo") complaint in intervention ("the Complaint") as follows:

I. INTRODUCTION

1. Lucent admits that the DFEH filed a lawsuit against Lucent which alleges that
Carauddo's rights had been violated by Lucent. The remaining allegations of this paragraph state

1 a legal conclusion to which no response is required. Lucent denies any of Carauddo's rights
2 have been violated.

3 **II. JURISDICTION AND VENUE**

4 2. Lucent admits that while employed by Lucent, Carauddo worked, in part, in
5 Alameda County.

6 3. Lucent admits that it is a Delaware Corporation and allowed to conduct business in
7 the State of California.

8 4. Lucent admits the allegations contained in paragraph 4 of the Complaint.

9 5. Lucent lacks sufficient knowledge and information to form a belief as to the truth
10 or falsity of the allegations contained in paragraph 5 of the Complaint and, therefore, denies such
11 allegations.

12 6. Lucent lacks sufficient knowledge and information to form a belief as to the truth
13 or falsity of the allegations contained in paragraph 6 of the Complaint and, therefore, denies such
14 allegations.

15 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 7. Lucent admits that Carauddo filed a timely charge of discrimination on the basis of
17 known disability with the DFEH; however, Lucent denies that Carauddo filed any charge of
18 discrimination on the basis of perceived disability discrimination with the DFEH.

19 8. Lucent admits the allegations set forth in paragraph 8 of the Complaint.

20 9. Lucent admits the allegations set forth in paragraph 9 of the Complaint.

21 10. Lucent admits the allegations set forth in paragraph 10 of the Complaint, except
22 that Lucent denies the DFEH timely filed its complaint in the Superior Court for the County of
23 San Francisco as to all claims alleged.

24 **IV. GENERAL ALLEGATIONS AS TO ALL CLAIMS**

25 11. Lucent admits the allegations set forth in paragraph 11 of the Complaint.

26 12. Lucent lacks sufficient knowledge and information to form a belief as to the truth
27 or falsity of the allegations contained in paragraph 12 of the Complaint and, therefore, denies
28 such allegations.

1 13. Lucent lacks sufficient knowledge and information to form a belief as to the truth
2 or falsity of the allegations contained in the first sentence of paragraph 13 of the Complaint and,
3 therefore, denies such allegations. Lucent admits that Carauddo called in to work sick for several
4 days.

5 14. Lucent lacks sufficient knowledge and information to form a belief as to the truth
6 or falsity of the allegations contained paragraph 14 of the Complaint and, therefore, denies such
7 allegations.

8 15. Lucent lacks sufficient knowledge and information to form a belief as to the truth
9 or falsity of the exact diagnosis set forth in paragraph 15 of the allegations of the Complaint, and,
10 therefore, denies such allegations.

11 16. Lucent admits the allegations set forth in paragraph 16 of the Complaint.

12 17. Lucent denies the allegations set forth in paragraph 17 of the Complaint.

13 18. Lucent denies the allegations set forth in paragraph 18 of the Complaint.

14 19. Lucent admits the allegations set forth in paragraph 19 of the Complaint.

15 20. Lucent admits that on or about January 27, 2006, Lucent terminated Carauddo's
16 employment for the reason alleged in paragraph 20 of the Complaint and others.

17 21. Lucent admits the contents of the job description but denies the remaining
18 allegations set forth in paragraph 21 of the Complaint.

19 22. Lucent lacks sufficient knowledge and information to form a belief as to the truth
20 or falsity of the allegations contained in the first sentence of paragraph 22 of the Complaint and,
21 therefore, denies such allegations. Lucent further denies the remaining allegations in paragraph
22 22 of the Complaint.

23 23. Lucent lacks sufficient knowledge and information to form a belief as to the truth
24 or falsity of the allegations contained in paragraph 23 of the Complaint and, therefore, denies
25 such allegations.

26 24. Lucent admits the allegations set forth in paragraph 24 of the Complaint.
27
28

1 25. Lucent lacks sufficient knowledge and information to form a belief as to the truth
2 or falsity of the allegations contained paragraph 25 of the Complaint and, therefore, denies such
3 allegations.

4 26. Lucent denies all allegations set forth in paragraph 26 of the Complaint.

5 **FIRST CAUSE OF ACTION**

6 Termination Because of Disability in Violation of California Fair Housing and Employment Act
7 (California Government Code § 12940 *et seq.*)

8 27. Lucent incorporates by reference its responses to the allegations contained in
9 paragraphs 1 through 26 above, as if set forth at length herein.

10 28. Lucent admits that Carauddo was a person with a disability within the meaning of
11 the FEHA and was limited in his major life activities and had a record of such limitations. Lucent
12 denies that Carauddo was solely “regarded by” Lucent as having such limitations.

13 29. Lucent admits the allegations set forth in paragraph 29 of the Complaint.

14 30. The allegations contained in paragraph 30 of the Complaint state a legal
15 conclusion to which no response is required.

16 31. Lucent denies all allegations set forth in paragraph 31 of the Complaint.

17 32. Lucent denies all allegations set forth in paragraph 32 of the Complaint.

18 33. Lucent denies all allegations set forth in paragraph 33 of the Complaint.

19 34. Lucent denies all allegations set forth in paragraph 34 of the Complaint.

20 **SECOND CAUSE OF ACTION**

21 Failure to Accommodate in Violation of California Fair Housing and Employment Act
22 (California Government Code § 12940 (m) *et seq.*)

23 35. Lucent incorporates by reference its responses to the allegations contained in
24 paragraphs 1 through 34 above, as if set forth at length herein.

25 36. Lucent admits that Carauddo was a person with a disability within the meaning of
26 the FEHA and was limited in his major life activities and had a record of such limitations. Lucent
27 denies that Carauddo was solely “regarded by” Lucent as having such limitations.

28 37. Lucent admits the allegations set forth in paragraph 37 of the Complaint.

1 38. The allegations contained in paragraph 38 of the Complaint state a legal
2 conclusion to which no response is required.

3 39. Lucent denies all allegations set forth in paragraph 39 of the Complaint.

4 40. Lucent denies all allegations set forth in paragraph 40 of the Complaint.

5 41. Lucent denies all allegations set forth in paragraph 41 of the Complaint.

6 42. Lucent denies all allegations set forth in paragraph 42 of the Complaint.

7 **THIRD CAUSE OF ACTION**

8 Failure to Engage in a Timely, Good Faith Interactive Process in Violation of the

9 California Fair Housing and Employment Act

10 (California Government Code § 12940 (m) *et seq.*)

11 43. Lucent incorporates by reference its responses to the allegations contained in
12 paragraphs 1 through 42 above, as if set forth at length herein.

13 44. Lucent admits that Carauddo was a person with a disability within the meaning of
14 the FEHA and was limited in his major life activities and had a record of such limitations. Lucent
15 denies that Carauddo was solely “regarded by” Lucent as having such limitations.

16 45. Lucent admits the allegations set forth in paragraph 45 of the Complaint.

17 46. The allegations contained in paragraph 46 of the Complaint state a legal
18 conclusion to which no response is required.

19 47. Lucent denies all allegations set forth in paragraph 47 of the Complaint.

20 48. Lucent denies all allegations set forth in paragraph 48 of the Complaint.

21 49. Lucent denies all allegations set forth in paragraph 49 of the Complaint.

22 50. Lucent denies all allegations set forth in paragraph 50 of the Complaint.

23 **FOURTH CAUSE OF ACTION**

24 Wrongful Termination in Violation of Public Policy

25 51. Lucent incorporates by reference its responses to the allegations contained in
26 paragraphs 1 through 50 above, as if set forth at length herein.

27 52. The allegations contained in paragraph 52 of the Complaint state a legal
28 conclusion to which no response is required.

FIRST AFFIRMATIVE DEFENSE

(Business Judgment)

1. As a first affirmative defense, Lucent avers that its actions with respect to Carauddo were a legitimate exercise of Lucent's business judgment which Carauddo cannot invade.

SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate)

2. As a second affirmative defense, Lucent avers that Carauddo's claim for damages is barred, in whole or in part, because, based on information and belief, Carauddo has failed to exercise due diligence in an effort to mitigate his damages.

THIRD AFFIRMATIVE DEFENSE

(Cal. Gov. Code § 12940(a))

3. As a third affirmative defense, Lucent avers that Carauddo's claim is barred, because Carauddo is unable to perform his essential duties even with reasonable accommodation.

FOURTH AFFIRMATIVE DEFENSE

(Cal. Gov. Code § 12940(a))

4. As a fourth affirmative defense, Lucent avers that Carauddo's claim is barred, because Carauddo is unable to perform his essential duties in a manner that would not endanger his health or safety even with reasonable accommodation.

FIFTH AFFIRMATIVE DEFENSE

(Cal. Gov. Code § 12940(a))

5. As a fifth affirmative defense, Lucent avers that Carauddo's claim is barred, because Carauddo is unable to perform his essential duties in a manner that would not endanger the health or safety of others even with reasonable accommodation.

SIXTH AFFIRMATIVE DEFENSE

(Undue Hardship)

6. As a sixth affirmative defense, Lucent avers that Carauddo's claim is barred, because assuming Carauddo requested an accommodation, it created an undue hardship for Lucent.

SEVENTH AFFIRMATIVE DEFENSE

(Contractual Obligation)

7. As a seventh affirmative defense, Lucent avers that Carauddo's claim is barred, because the applicable collective bargaining agreement incorporates the requirements of the Carraudo's position which could not be altered.

EIGHTH AFFIRMATIVE DEFENSE

(Business Necessity)

8. As an eighth affirmative defense, Lucent avers that Carauddo's claim is barred in whole or in part, on the grounds that Lucent's actions as they affected Carauddo were undertaken for lawful, substantial, and justifiable business reasons.

NINTH AFFIRMATIVE DEFENSE

(LMRA Section 301 Federal Preemption)

9. As a ninth affirmative defense, Lucent avers that Carauddo's claims are pre-empted in whole or in part by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

TENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

10. As a tenth affirmative defense, Carauddo's claims are barred, in whole or in part, to the extent that he has failed to exhaust the administrative remedies for any such claims.

ELEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

11. As an eleventh affirmative defense, Lucent avers that Carauddo's claims are barred, in whole or in part, by the applicable statute of limitations, including but not limited to

1 California Code of Civil Procedure §§337, 339, and 340; California Government Code §§ 12960
2 and 12965.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 (Fraud, Malice or Oppression)

5 12. As a twelfth affirmative defense, Lucent avers that any acts or omissions to act by
6 Lucent were not the result of fraud, malice or oppression, as such terms are defined by California
7 Civil Code §3294.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 (NLRA Section 8(a)(3) Federal Preemption)

10 13. As a thirteenth affirmative defense, Lucent avers that Carauddo's claims are
11 preempted in whole or in part by section 8(a)(3) of National Labor Relations Act, 29 U.C.S.C. §
12 141, et. seq.

13 WHEREFORE, Lucent prays that:

- 14 1. Carauddo takes nothing by this Complaint;
15 2. Judgment be entered in favor of Lucent; and,
16 3. For such other and further relief deemed proper.

17
18 DATED: May 6, 2008

EPSTEIN BECKER & GREEN, P.C.

19
20 By: /s/ Rachel S. Hulst

21 Leslie J. Mann

Rachel S. Hulst

22 Attorneys for Defendant

Lucent Technologies Inc.